

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2553 of 1999

to

FIRST APPEAL No 2562 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MANSUKH NATHU

Appearance:

Mr. P.G. Desai, GOVERNMENT PLEADER for appellants
in F.A. Nos. 2553/99 to 2558/99

Mr. R.C. Kodekar, AGP, for the appellants, in F.A.
Nos.2559/99 to 2562/99.

Mr.K.L. Dave for the respondents

CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

Date of decision: 29/09/1999

COMMON ORAL JUDGEMENT

1. All these appeals, under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated November 23, 1998, rendered by the learned Extra Assistant Judge, Junagadh, in Land Reference Cases Nos. 290/88 to 299/88.

2. All the abovereferred to land reference cases were heard and decided together and Land Reference Case No.290 of 1988 was treated as main case in which the

parties had led common evidence. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

3. The Executive Engineer, Una Irrigation Department, by his letter, had sent a proposal to the Collector to acquire agricultural lands of village Vadaviyala, Taluka Una, District Junagadh, for public purpose of "Machhunderi Irrigation Scheme". On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Vadaviyala were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued which was published in the Government Gazette on November 29, 1984. Those whose lands were sought to be acquired were served with notices and they had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Vadaviyala which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of "Machhunderi Irrigation Scheme". Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on July 3, 1986. Interested persons were, thereafter, served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.1500/per Are for acquired lands, but, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated November 25, 1986, offered compensation to the claimants at the rate of Rs.100/- per Are for bagayat land and Rs.70 per Are for jirayat land. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition was inadequate. Therefore, they submitted applications in writing requiring the Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Junagadh, which were numbered as Land Reference Cases Nos. 290/88 to 299/88. In the reference applications, it was pleaded by the claimants that their agricultural lands which were acquired were highly fertile and they used to raise two crops in a year, and having regard to over all development which had taken place near acquired lands, they were entitled to compensation at the rate of Rs.

1500 per Are. It was further pleaded that the Land Acquisition Officer had not taken into consideration the fact that prevailing market rate of acquired lands was at Rs.1500/per Are on the relevant date. The reference applications were contested by the appellants by filing written statement at Exh.7, inter alia, contending that the Land Acquisition Officer had taken into consideration all the relevant aspects while determining market price of acquired lands. It was further pleaded that the reference applications were factually and legally not maintainable as determination of compensation by the Special Land Acquisition Officer was just as well as proper and, therefore, reference applications should be dismissed. Upon rival assertions of the parties, common issues for determination were raised by the Reference Court. In order to substantiate the claim advanced in the reference applications, the claimants examined (i) Thakarshibhai Karshanbhai Malavia Exh.12 and (ii) Mansukhbhai Nathubhai Malaviya Exh.14. Witness Thakarsinh Karshanbhai Malavia produced sale deed dated August 14, 1973 to the effect that the land bearing Survey No.220 admeasuring 11 Acre and 2 Gunthas was sold for a consideration of Rs.20,000/-. The claimants also produced certified copy of the award of the Reference Court in Land Acquisition Case No.205 of 1991 decided on October 12, 1998 with respect to lands of village Kodiya. By the said award, market price of acquired lands of village Kodiya came to be determined at the rate of Rs.660/- per Are for the irrigated lands and Rs.495/- per Are for the non-irrigation lands. The lands of Kodiya came to be acquired by notification published under Section 4(1) of the Act on February 6, 1978. On behalf of the appellants, one Bhupatlal Jamnadas Chaniara, Deputy Mamlatdar, was examined at Exh.21. After considering the evidence led by the parties, the Reference Court held that previous award of the Reference Court rendered in respect of agricultural lands of village Kodiya was comparable as well as relevant for the purpose of determining market value of the lands acquired in the present case. The Reference Court concluded that the lands of village Kodiya were acquired on February 6, 1978 which was the date of publication of notification under Section 4(1) of the Act, whereas the agricultural lands in the present case were acquired on November 29, 1984. The Reference Court gave 10% rise for increase of price every year for the purpose of determining correct value of the lands acquired in the present case as on November 29, 1984. In the ultimate analysis, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.1056/-per Are for the irrigated lands and Rs.795/- per Are for the non-irrigated lands, giving

rise to filing of these appeals.

4. Mr. P.G. Desai, learned Government Pleader, assisted by Mr.R.C.Kodekar, learned Assistant Government Pleader, for the appellants, submitted that previous award of the Reference Court rendered in respect of agricultural lands of village Kodiya is neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of the lands acquired in the present case. It was claimed that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs.1056/-per Are for the irrigated lands Rs.795/- per Are for the non-irrigated lands and, therefore, the impugned award should be set aside. Learned Government Counsel further submitted that the claimants had produced sale deed Exh.13 of the same village, i.e Vadaviyala but it was not relied upon by the Reference Court, instead the Reference Court relied upon previous award Exh.46 with respect to acquired lands of another village i.e village Kodiya. It is stressed that village Kodiya was at a distance of 8.75 kms from the acquired lands of the present appeals. It is further submitted by the learned Government Pleader for the appellants that, if the Reference Court had placed reliance on the sale deed Exh.13, the market price of acquired lands would have been on a lower side. It is further stressed that previous award can only be relied upon for the purpose of determination of acquired lands if there was no evidence of bonafide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages, available on record of the case. It was further pleaded by the learned Government Pleader for the appellants that, when sale deed Exh.13 of the same village was produced and proved by the claimants, the reference Court should have relied upon said sale deed for the purpose of ascertaining market value of the acquired lands in the present case. It was contended by learned Government Pleader for the appellants that the Reference Court has erred in awarding interest on the amount of solatium and as compensation determined by the Reference Court was highly excessive, the appeals deserve to be allowed with costs.

5. Mr. K.L. Dave, learned counsel for the claimants, submitted that previous award (Exh.46) of the Reference Court rendered in respect of agricultural lands of village Kodiya is comparable as well as relevant for the purpose of determining market value of the lands acquired of village Vadaviyala and, therefore, it cannot

be said that any error is committed by the Reference Court in placing reliance on the said award for the purpose of determining market value of the lands acquired in this case. It is further submitted by learned counsel for the claimants that the previous award Exh.46 in respect of the acquired lands of village Kodiya was confirmed by the Division Bench of this Court (Coram: J.M. Panchal & R.P. Dholakia, JJ.) in First Appeal No.1320 of 1999 decided on July 27, 1999, and, therefore, the Reference Court had not committed any error in placing reliance on the previous award Exh.46 for determination of market value of acquired lands. It is further submitted by learned counsel for the claimants that previous award Exh.46 had become final and the acquired lands which were subject matter of previous award Exh.46 were comparable in all respects with acquired lands in the present case. What was asserted was that a just award has been passed by the Reference Court determining market value of the lands acquired and, as no ground is made out to interfere with the same, the appeals should be dismissed with costs.

6. We have heard learned counsel for the parties at length. We have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding this group of appeals.

7. Normally, methods of valuation are: (i) opinion of experts; (ii) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. It is settled law that the previous award can only be relied upon if there was no other evidence produced by the claimants or the acquiring body for the purpose of determining the market value of the acquired lands. The best evidence of the value of the property is sale transaction in respect of the acquired land to which the claimant may be a party. Sale transaction duly proved by the parties is the best evidence for the purpose of determining the market value of the acquired lands provided that the same is relating to similarly situated lands and in the near proximate of time compared to issuance of notification under Section 4(1) of the Act. The sale deed Exh.13 was duly proved by the claimant's witness, Thakarshibhai Karshanbhai Malavia Exh.12. The said witness deposed that he had, along with four brothers, purchased land bearing Survey No.220 admeasuring 1 Acre and 2 Gunthas on August 14, 1973 for a

consideration of Rs.20,000/-. The price of the lands sold under sale deed Exh.13 comes to Rs.476.00 per Are approximately, at the relevant time. We may state that, in the previous award Exh.46, which was in respect of the acquired lands of village Kodiya, the market price was determined on the basis of very sale deed Exh.13, which was in respect of the agricultural lands of village Vadaviyala. When the sale transaction of the lands of the very village was produced on the record of the Reference Court in the present proceedings, the Reference Court was not justified in placing reliance on the previous award Exh.46 of another village Kodiya, which was situated at a distance of 8.75 kms., for the purpose of determining the market value of the acquired lands. It is an admitted fact that the lands which were subject matter of sale deed Exh.13 and the lands which are acquired in the present case are similar in all respects. Therefore, submission of learned counsel for the appellants that the Reference Court has erred in placing reliance on the previous award Exh.43 deserves to be accepted. Learned counsel for the appellants then submitted that sale deed Exh.13 was for a small area of land as compared to the acquired lands in the present case admeasuring 2 Hectare 87 Are 53 sq.mtrs. The learned counsel for the appellants therefore submitted that because of smallness of area, some deduction will have to be made to arrive at market price of the lands having large areas. Learned counsel for the appellants in support of the submission that valuation of large areas of land cannot be determined on the basis of a sale instance of a small plot of land without making suitable deductions from the sale price of small plot of land, placed reliance on the decision of the Gujarat High Court in the case of State of Gujarat vs. Shree Devji Bechar, reported in AIR 1991 Gujarat 187 . In the above decision, the Division Bench of the Gujarat High Court ruled that small area of land would fetch a higher price and ordinarily a large tract of land cannot be valued on the same basis as a small plot of land. It is observed that the number of intending purchases competing for the purchase of a small plot would be far greater than that for a large plot, with the result that the seller of small plot is likely to obtain a comparatively higher price than the seller of a big plot of land. The Division Bench in the case of Devji Bechar (supra) made deduction of 33% from the price of sale transaction with regard to small area of land in evaluating market price of large tract of land. If the principle laid down by the Division Bench in the case of Devji Bechar (supra) is followed and applied, then deduction of 33% shall have to be made from the price of sale deed Exh.13 which was

Rs.476 per Are for the agricultural lands of village Vadaviyala admeasuring 1 Acre and 2 Gunthas. If 33% deduction is given to determine market price of the big tracts of the land, it would come to Rs.318/per Are. It is an admitted fact that sale transaction Exh.13 had taken place on August 14, 1973 whereas notification under Section 4(1) of the Act was published in the present case on November 29, 1984. Thus, there was a gap of nearly 11 years between sale transaction Exh.13 and issuance of notification under Section 4(1) of the Act in respect of the acquired lands. The claimants' witnesses, in their oral testimony before the Reference Court, stated that the acquired lands were having high fertility and the agriculturists used to raise two crops in a year. It has also come on record in the evidence of the witnesses that, due to acquisition, there was heavy pressure on the lands of surrounding villages, namely, Kodiya, Dhron, Jargali, etc. The facts emerging from the record of the present case indicate that because of heavy pressure on the lands of surrounding villages, the price of the agricultural lands was increasing every year. In our view, therefore, a reasonable rise in price of land should be given, which can be at 10% per year. There was time-gap of 11 years between sale transaction Exh.15 and issuance of notification under Section 4(1) of the Act in respect of the acquired lands. If 10% rise in price of Rs.318/- is added, it would come to Rs.665/- per Are. In our opinion, the market price of the acquired lands of village Vadaviyala as on the date of notification under Section 4(1) of the Act, i.e. November 28, 1984, can be determined at Rs.665/- per Are for non-irrigated lands. Learned counsel for the parties have stated that in the present group of appeals, acquired lands are only non-irrigated lands and therefore market price of the lands is determined for non-irrigated lands.

8. The submission of the learned counsel for the appellants that the Reference Court has erred in awarding interest on the amount of solatium deserves to be accepted in view of the decision of the Supreme Court rendered in the case of State of Maharashtra vs. Maharau Srawan Hatkar, Judgment Today 1995 (2) S.C. 583, wherein, the Supreme Court ruled that direction to pay interest on the amounts payable to the claimant under Section 23(1-A) and 23(2) of the Act could not have been given because the additional amounts envisaged under sub-sections (1-A) (2) of Section 23 are not part of component of compensation awarded under Section 23(1) of the Act and, therefore, direction to pay interest on these amounts cannot be given. Therefore, the award of interest on the amount of solatium deserves to be set aside.

9. For the foregoing reasons, the appeals filed by the appellants are partly allowed. It is held that market value of the acquired land on the relevant was Rs.665 per Are for non-irrigated lands. The claimants shall not be entitled to interest on the amount of solatium as envisaged under Section 23(2) of the Act. The rest of the directions given by the Reference Court with regard to payment of solatium, etc. are not disturbed and are hereby upheld. The office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

(swamy)